

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7505/2021

BEFORE: MRS.RASHIDA BANO MEMBER (J)
MISS FAREEHA PAUL MEMBER (E)

Zia Jan, Sub Engineer, (Retired), Office of Executive Engineer, C & W
Division, Charsadda.

... (*Appellant*)

VERSUS

1. The Secretary, Communication & Works Department, Civil Secretariat, Peshawar.
2. Chief Engineer, (Centre), Communication & Works Department, Civil Secretariat, Peshawar.
3. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.

... (*Respondents*)

Mr. Fazal Shah Mohmand
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For respondents

Date of Institution.....30.09.2021

Date of Hearing.....18.04.2024

Date of Decision.....18.04.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J):The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:

“On acceptance of this appeal, the impugned order issued vide letter dated 15.02.2018 and communicated to the appellant on 10.11.2022 may kindly be set aside and the appellant may be granted proforma promotion as Assistant



Engineer/SDO (BPS-17) w.e.f 13.10.2015 with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal are that appellant was appointed as Sub-Engineer in the respondent department on 22.02.1979. Final seniority list of Diploma Holder, Sub Engineers was issued on 26.08.2015 wherein he was placed at serial No. 2. In the year 2015, process for promotion of Sub-Engineers to Assistant Sub Engineers/SDEOs was initiated and appellant being eligible for promotion was deferred on the ground of missing ACRs/PERs and junior to him were promoted vide notification dated 13.10.2015. Feeling aggrieved, appellant filed departmental appeal, which was not responded. Then appellant filed writ petition before worthy Peshawar High Court, Peshawar which was transmitted to respondent department with direction to decide the departmental appeal of the appellant which was again not responded, hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law, rather he has been discriminated and deprived from further promotion which is illegal, unconstitutional, unlawful and of no legal effect; that appellant had served the department for long 38 years and retired from service in May 2016 with spotless service record and is entitled for promotion w.e.f. 13.10.2015; he requested that instant appeal might be accepted as prayed for.

5. Conversely, learned Deputy District Attorney argued that appellant has



been treated in accordance with law and rules and no rights of appellant has been infringed. He further contended that in the year 2015 promotion case of the appellant has been placed before the Departmental Promotion Committee and the committee deferred the promotion case of the appellant due to lack of ACRs which were not countersigned.

6. Perusal of record reveals that appellant was appointed as Sub Engineer on 22.02.1979 being Diploma Holder of Associate Engineer alongwith Bachelor in Civil Engineering in respondent department. After serving 38 years, name of the appellant was placed at serial No.2 of the seniority list of Diploma Holders Sub Engineers issued on 26.08.2015. Process for promotion of Sub Engineer BS-16 to Assistant Sub Engineer/SDO BPS-17 was initiated and appellant being eligible was also considered but was deferred for want of provision of PERs/ACRs for the period from 22.02.1979 to 31.12.2013 and junior to the appellant were promoted including Main Manzoor Khattak Shah and Zahir Ur Rehman vide notification dated 13.10.2015. Appellant provided ACR of the required period till 2014 but he was not considered despite lapse of two years till the filing of appeal.

7. It is important to mention here that appellant in response to letter dated 14.05.2015 submitted his ACRs/PERs to the department which was sent to Section Officer Establishment C&W by Administration Officer vide letter No.48, 79/CEC/C&W dated 21.08.2015, which means process of ACRs was initiated and appellant discharged his duties by submitting his PERs/ACRs before meeting of DPC which was held on 01.09.2015.

Appellant was deferred as his ACRs for the period are not countersigned.




Countersigning of ACRs is not the responsibility and duty of the appellant rather it was the responsibility of the authority and initiating officer to whom same was submitted, to defer appellant for the reason that his ACRs were not countersigned is not logical otherwise too under promotion policy respondent would have to reserve one vacant position for appellant and after removal of deficiency to promote him from the date when his junior were promoted and he was deferred. Appellant was retired from service in May, 2016, therefore, he is entitled for proforma promotion. Reliance is placed on 2021 SCMR 1266.

8. For what has been discussed above, the appeal in hand is accepted as prayed for. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th day of April, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

ORDER


18.04.2024 1

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand is accepted as prayed for. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th day of April, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

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